IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

MODINE MANUFACTURING COMPANY,	)	
	)	
Plaintiff,	)	
	)	
v.	)	C.A. No. ______________________
	)	
BORGWARNER INC.,	)	JURY TRIAL DEMANDED
	)	
Defendant.	)	

COMPLAINT

Plaintiff Modine Manufacturing Company ("Modine"), for its Complaint against Defendant BorgWarner Inc. ("BorgWarner"), hereby alleges as follows:

NATURE OF THE ACTION

1. This is a civil action for infringement of United States Patent No. 8,794,299 (the "'299 Patent") under the Patent Laws of the United States, 35 U.S.C. § 1 *et seq*.

PARTIES

2. Plaintiff Modine is a Wisconsin corporation with its principal place of business at 1500 De Koven Ave., Racine, Wisconsin 53403-2552.

3. Defendant BorgWarner is a Delaware corporation with its principal place of business at 3850 Hamlin Road, Auburn Hills, Michigan 48326. BorgWarner may be served via its registered agent, The Corporation Trust Company, 1209 North Orange Street, Wilmington, Delaware 19801.

JURISDICTION AND VENUE

4. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331 and 1338(a).

5. This Court has personal jurisdiction over BorgWarner because BorgWarner is incorporated under Delaware law and is subject to personal jurisdiction in Delaware.

6. This Court also has personal jurisdiction over BorgWarner because, among other reasons, BorgWarner has established minimum contacts within the forum such that the exercise of jurisdiction over BorgWarner will not offend traditional notions of fair play and substantial justice. For instance, BorgWarner has placed heat exchanger products that practice the claimed invention of the ’299 Patent into the stream of commerce with the reasonable expectation and/or knowledge that purchasers and/or users of such products were located within the District of Delaware.

7. Venue is proper in this district pursuant to 28 U.S.C. §§ 1391 and 1400(b) because BorgWarner, an entity incorporated in Delaware, resides in this District. BorgWarner also has committed, and is continuing to commit, acts of patent infringement in this District by making, using, importing, selling, offering to sell, and/or importing into the United States heat exchanger products that infringe Modine’s ’299 Patent.

FACTUAL BACKGROUND

8. Founded in 1916, Modine specializes in thermal management systems and components, bringing highly engineered heating and cooling technology and solutions to diversified global markets. Modine products are used in many applications, including light, medium and heavy-duty vehicles, heating, ventilation and air conditioning equipment, off-highway and industrial equipment, and refrigeration systems.

9. Modine’s focus on innovative thermal management systems over the last 100 years has taken it from a small manufacturer in Racine, Wisconsin, to a global leader in the research, development, and production of heat transfer technology. Modine’s investment in innovation has resulted in over 2,200 patents.

10. United States Patent No. 8,794,299 (the "'299 Patent"), entitled "2-Pass heat exchanger including thermal expansion joints," was duly and legally issued by the United States Patent and Trademark Office on August 5, 2014. On July 28, 2015, the Patent Office issued a Certificate of Correction for the '299 Patent. A true and correct copy of the '299 Patent is attached hereto as **Exhibit A**.

11. Modine is the owner and assignee of the '299 Patent and has the right to sue and recover damages for any past, present, and future infringement of the '299 Patent.

12. The '299 Patent is directed to heat exchangers, including heat exchangers used in automobile engine systems. In particular, the heat exchangers of the '299 Patent may be used as exhaust gas recirculation coolers. An exhaust gas recirculation cooler is a heat exchanger that cools a portion of an automobile engine's exhaust gas, which can then be recirculated back into the engine, reducing certain emissions. Cooling hot exhaust gas subjects the heat exchanger to tremendous thermal stress. The inventors of the '299 Patent recognized that, among other features, a heat exchanger with two passes and a pair of thermal expansion joints would allow for, among other benefits, efficient cooling while reducing the effects of thermal stress on the heat exchanger.

13. Upon information and belief, BorgWarner has infringed and will continue to directly and/or indirectly infringe at least claim 1 of the '299 patent by making, using, selling, offering for sale, and/or importing into the United States a heat exchanger. Upon information and belief, BorgWarner's infringing heat exchangers are sold to Ford Motor Company ("Ford"), and are used as exhaust gas recirculation coolers in at least some of the engine assemblies of Ford's F-series pickup trucks.

CLAIM FOR RELIEF

Infringement of the ’299 Patent

14. Paragraphs 1 through 13 are incorporated by reference as if fully stated herein.

15. Upon information and belief, BorgWarner has infringed, and will continue to infringe, one or more claims of the ’299 Patent under 35 U.S.C. § 271(a), either literally and/or under the doctrine of equivalents, by making, using, offering to sell, selling and/or importing into the United States certain heat exchangers used as exhaust gas recirculation coolers, for example and without limitation, those incorporated into at least some of the engine assemblies of Ford’s F-series pickup trucks. **Exhibit B** includes charts comparing claims 1-9 and 11-17 of the ’299 Patent to an exemplary BorgWarner heat exchanger. As set forth in these charts, the exemplary BorgWarner heat exchanger practices, in whole or in material part, the technology claimed in the ’299 Patent. Accordingly, the exemplary BorgWarner heat exchanger infringes at least claims 1-9 and 11-17 of the ’299 Patent.

16. Upon information and belief, BorgWarner makes, uses, sells, offers to sell, and/or imports into the United States the accused heat exchangers; in addition, BorgWarner will actively induce infringement under 35 U.S.C. § 271(b) by actively and knowingly aiding and abetting another’s direct infringement, with specific intent to encourage infringement. BorgWarner has actual knowledge of the existence of the ’299 Patent since not later than the date of filing of this Complaint. BorgWarner sells the accused heat exchangers to Ford for use in at least some of the engine assemblies of Ford’s F-series trucks such that the accused heat exchanger is combined in a manner that infringes the ’299 Patent.

17. On information and belief, BorgWarner makes, uses, sells, offers to sell, and/or imports into the United States the accused heat exchangers; in addition, BorgWarner will contributorily infringe under 35 U.S.C. § 271(c) by selling, offering for sale, and/or importing

into the United States a claimed component of the accused heat exchanger system specially made or adapted for use in a manner that would infringe the ’299 Patent, that constitutes a material part of the invention, and is not a staple article or commodity of commerce suitable for substantial noninfringing uses. BorgWarner has actual knowledge of the existence of the ’299 Patent since not later than the date of filing of this Complaint. BorgWarner is responsible for the manufacture, use, sale, offer for sale, or importation of at least the coolant housing and exhaust gas cores of the accused heat exchanger, as indicated by BorgWarner’s U.S. Patent Application No. 2015/0260465, which depicts the coolant housing and exhaust gas cores of the exhaust gas recirculation cooler sold in Ford’s F-series pickup trucks. Together, these two components are a material part of the invention of the ’299 patent. BorgWarner’s coolant housing and exhaust gas cores, including their mountings and inlets/outlets, are specially designed for compatibility with the exhaust gas recirculation system found in at least some of the engine assemblies of Ford’s F-series pickup trucks, and therefore have no substantial noninfringing uses, as they are unlikely to be compatible with any other system.

18. Modine has been and continues to be damaged by BorgWarner’s infringement of the ’299 Patent. The injury to Modine is irreparable and will continue unless and until BorgWarner is enjoined from further infringement.

19. This case is exceptional, and Modine is entitled to an award of attorneys’ fees under 35 U.S.C. § 285.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff Modine respectfully requests that the Court:

A. Enter a judgment that BorgWarner has infringed at least one claim of the ’299 Patent;

B. Enter a judgment that BorgWarner has actively induced others to infringe at least one claim of the ’299 Patent;

C. Enter a judgment that BorgWarner has contributorily infringed at least one claim of the ’299 Patent;

D. Award Modine damages adequate to compensate it for BorgWarner’s past infringement and any continuing or future infringement, including interest, costs, and disbursements as justified under 35 U.S.C. § 284;

E. Enter a permanent injunction enjoining BorgWarner, its officers, directors, servants, managers, employees, agents, attorneys, successors and assignees, and all persons in active concert or participation with any of them, from further acts of infringement of the ’299 Patent, pursuant to 35 U.S.C. § 283;

F. Enter a judgment that this case is exceptional within the meaning of 35 U.S.C. § 285 and a judgment awarding Modine its reasonable attorneys’ fees, costs and expenses accrued in this action pursuant to 35 U.S.C. § 285; and

G. Provide such other and further relief in law or equity as the Court deems just and appropriate.

DEMAND FOR JURY TRIAL

Modine hereby demands a trial by jury on all issues appropriately triable by a jury.

MORRIS, NICHOLS, ARSHT & TUNNELL LLP

/s/ Jack B. Blumenfeld

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